

A-6488 (a) Special Permit & Variance Requests

A-6488 (b) Special Permit Request

(a) Install a generator in the front (Brookville Road) yard of the property that would encroach two feet, seven inches (2'-7") forward of the twenty five (25) foot front building restriction line; and

(b) Install an external air conditioner in the front (Oxford Street) yard of the property.

Mr. David A. Kirsch &
Ms. Andrea N. Kirsch
6400 Brookville Road

**CHEVY CHASE VILLAGE
BOARD OF MANAGERS
FEBRUARY 10, 2014 MEETING**

STAFF INFORMATION REPORT

TO: BOARD OF MANAGERS

FROM: ELLEN SANDS, PERMITTING AND CODE ENFORCEMENT COORDINATOR

DATE: 2/5/2014

SUBJECT: HEARING OF CASE NO. A-6488 (A) & (B) VARIANCE AND SPECIAL PERMIT REQUESTS
MR. DAVID A. KIRSCH AND MS. ANDREA N. KIRSCH, 6400 BROOKVILLE ROAD
(A) INSTALL A GENERATOR IN THE FRONT (BROOKVILLE ROAD) YARD OF THE PROPERTY
THAT WOULD ENCROACH TWO FEET, SEVEN INCHES (2'-7") FORWARD OF THE TWENTY FIVE
(25) FOOT FRONT BUILDING RESTRICTION LINE; AND
(B) INSTALL AN EXTERNAL AIR CONDITIONER IN THE FRONT (OXFORD STREET) YARD OF THE
PROPERTY.

Case Synopsis: The Applicants are undertaking a renovation and addition at the property which includes the installation of three new air conditioners, two of which, as proposed, would be located in compliant locations. The third air conditioner, and a proposed generator, require Board approval due to their proposed location in front yards and, in the case of the generator, because the proposed location is forward of the front (Brookville Road) building restriction line. (While forward of the front BRL, it does not encroach farther forward than the existing front stoop and portico at the property.) The Applicants state that because of the screening provided by an existing brick wall, the proposed locations are less obtrusive than other (compliant) locations on the property. Additionally, they contend that because the proposed locations abut Brookville Road, rather than a residence, the equipment noise would be minimized for abutting neighbors and would allow the Applicants greater use of the yard.

NOTICE REQUIREMENTS: Abutting Owners; Public Notice

APPLICABLE CHEVY CHASE BUILDING REGULATION:

The Chevy Chase Village Code § 8-23 (c) states:

No person shall install an external air conditioner, heat pump or generator within seven (7) feet of any side lot line or rear lot line nor in the front yard of any property without a special permit from the Board of Managers.

Additionally, regarding the proposed generator,

The Chevy Chase Village Code § 8-17 (c) states:

No structure or play equipment of any description shall be erected within twenty-five (25) feet of the front line of any lot.

APPLICABLE COVENANTS:

"That no structure of any description shall be erected within twenty-five (25) feet of the front line of said premises; and that no stable, carriage-house, shed, or outbuilding shall be erected except on the rear of said premises. In the case of corner lots any and all lines bordering upon a street, avenue, [or] parkway shall be considered a front line." *The outside face of the generator is located two feet, seven inches (2'-7") forward of the twenty-five (25) foot front building restriction line (BRL). The air conditioner does not encroach forward of a front BRL so there is no applicable covenant for that unit.*

FACTUAL AND BACKGROUND INFORMATION:

The property is located on the northwest corner of Oxford Street and Brookville Road.

The Village Code stipulates that no generator or air conditioner shall be placed in the front yard of any property. (The "front yard" is defined as "[t]he area located between the front lot line and the front main building line ...". As a corner property, both the Brookville Road and Oxford Street yards are deemed front yards. Accordingly, the special permits are requested.

The proposed generator location (Case "A") is forward of the twenty-five (25) foot front (Brookville Road) building restriction line (BRL); thus a variance is requested for that encroachment.



Figure 1: View of 6400 Brookville Road, looking northwest. The proposed generator and air conditioner would be located behind the wall.

The proposed generator (Case "A") would be located behind the brick wall (above) in the Brookville Road (front) yard. The proposed air conditioner (Case "B") would be located south of the generator, in the Oxford Street (front) yard (see plan provided in application).



Figure 2: View of the Oxford Street (front) yard. The proposed generator and air conditioner would be located behind the hedge and would not encroach forward of the front (Oxford Street) building restriction line.

The locations are compliant with Montgomery County regulations, which allow mechanical equipment to encroach up to five (5) feet into front yard setbacks.

The property is located in the Chevy Chase Village Historic District. The proposed addition has received approval from the Historic Preservation Commission (HPC).

There are currently two external air conditioners located in the north yard of the property (to the right of the main portion of the house) in compliant locations. These units will be replaced and relocated as part of a proposed addition and renovation at the property. The units are located where a window well is proposed to be installed. No additional Board approvals are required for the addition.

There is a multi-trunk Fig tree that has been approved for removal by the Village arborist (reason cited: failing health & cracked trunk) in order to accommodate the installation of the various mechanical units.

To date there has been one letter received from an abutting neighbor in support of the project and no letters of objection received.

Applicable Fees: Building Permit Application: \$50; Special Permit Fee: \$300; TOTAL: \$350.

RELEVANT PRECEDENTS:

Variance (Case "A"): In March of 2012, Mr. and Mrs. Stefan Demmerle, of 5501 Kirkside Drive, were granted permission to maintain an air conditioner that had been installed in the Western Avenue (front) yard of the property, forward of the front building restriction line. In that case, the Applicants contended that because other elements of the house (a portico and stoop) that were original to the house already encroached forward of the front covenant setback, and the proposed work encroached no farther, that the covenant was not materially enforceable at that property. Similarly, in 2002 at 20 Oxford Street, the Board had determined that because the existing house violated the applicable covenants, placement of an air conditioning unit in the front yard (adjacent to an existing air conditioner) would not materially violate any enforceable covenant. That case was also similar to this current application because the property is an oddly shaped lot and the unit was being located in the Brookville Road front yard. In December 2011 Mr. & Mrs. Dean D'Angelo of 5810 Connecticut Avenue were granted permission to **maintain** an air conditioner that had been replaced and that encroached three (3) feet forward of the West Irving Street (front) building restriction line.

Special Permit (Case "A" & "B"): In 1989, Mr. & Mrs. Robert McCollough of 5903 Connecticut Avenue were **granted** permission to install an air conditioner in the Connecticut Avenue (front) yard. Other cases for which special permits have been granted for the installation of an external air conditioner in a front yard have been at properties where the equipment was installed in a front yard that acts effectively as a "side" yard. Examples are: 101 East Melrose Street (in the Brookville Rd. front yard) in 1996; 20 Oxford Street (for replacement of a unit in the Brookville Rd. front yard), in 2002; 26 Oxford Street (in the Brookville Rd. front yard) in 2007; 5403 Center Street in the front (Grove Street extended Buffer Area) yard of the property in 2008; 5810 Connecticut Avenue (replacement of a unit in the West Irving Street front yard), in 2011 (a retroactive special permit to maintain an air conditioner that had been replaced without the applicable permit). Most recently, in October 2013, Ms. Julia Anne Matheson and Mr. Timothy Slagle were **granted** permission to **install** an air conditioner in the Park Street (front) yard. As in this current application, there was a compliant location possible however the Applicants contended that the

proposed location was less obtrusive from the street because the unit was shielded from view by a wood fence and hedge.

FINDINGS REQUIRED (VARIANCE FOR THE GENERATOR):

1. The proposed variance is required because special conditions exist whereby the enforcement of the requirements of the Village Building Code would result in an unwarranted hardship and injustice to the owner.
2. The proposed variance will most nearly accomplish the intent and purpose of the requirements of the Village Building Code; and
3. Except for variances from the requirements of Sections 8-22 [fences], 8-26 [driveways] or Chapter 25 [public rights-of-way] of the Village Regulations, the structure authorized by the proposed variance would not violate any covenant applicable to the property.

FINDINGS REQUIRED (SPECIAL PERMITS FOR THE AIR CONDITIONER AND GENERATOR):

1. The proposed special permit would not adversely affect the public health, safety or welfare, nor the reasonable use of adjoining properties;
2. The proposed special permit can be granted without substantial impairment of the intent and purpose of this chapter; and
3. For all special permits, except for special permits authorized by Sections 8-22, 8-26 or Chapter 25 of the Village Code, the structure authorized by the proposed special permit would not violate any covenant applicable to the property.

Draft Motions

I move to APPROVE/DENY the special permit and variance request in Case A-6488(a) on the basis that the evidence presented, including the staff report, demonstrates that the applicable requirements for approval of the special permit and variance HAVE/HAVE NOT been met. Staff is directed to draft a decision based on this evidence, including findings of fact and conclusions, APPROVING/DENYING the requests.

I move to APPROVE/DENY the special permit request in Case A-6488(b) on the basis that the evidence presented, including the staff report, demonstrates that the applicable requirements for approval of the special permit HAVE/HAVE NOT been met. Staff is directed to draft a decision based on this evidence, including findings of fact and conclusions, APPROVING/DENYING the request.

**CHEVY CHASE VILLAGE
NOTICE OF PUBLIC HEARING**

Please take notice that the Chevy Chase Village Board of Managers will hold a public hearing on the 10th day of February, 2014 at 7:30 p.m. The hearing will be held at the Chevy Chase Village Hall at 5906 Connecticut Avenue in Chevy Chase, Maryland.

**APPEAL NUMBER A-6488 (a)
MR. DAVID A. KIRSCH & MS. ANDREA N. KIRSCH
6400 BROOKVILLE ROAD
CHEVY CHASE, MARYLAND 20815**

The applicants seek a special permit and a variance from the Board of Managers pursuant to Section 8-11 of the Chevy Chase Village Building Code to install a generator in the front (Brookville Road) yard of the property that would encroach two feet, seven inches (2'-7") forward of the twenty five (25) foot front building restriction line.

The Chevy Chase Village Code § 8-23 (c) states:

No person shall install an external air conditioner, heat pump or generator within seven (7) feet of any side lot line or rear lot line nor in the front yard of any property without a special permit from the Board of Managers.

Additionally,

The Chevy Chase Village Code § 8-17 (c) states:

No structure or play equipment of any description shall be erected within twenty-five (25) feet of the front line of any lot.

Additional information regarding this appeal may be obtained at the Chevy Chase Village Office between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday, may be viewed on the Village website at www.chevychasevillagemd.gov or you may contact the office for this information to be mailed to you.

This notice was emailed (where possible) and mailed to abutting and confronting property owners on the 30th day of January, 2014.

**Chevy Chase Village Office
5906 Connecticut Avenue
Chevy Chase, Maryland 20815
301-654-7300**

**CHEVY CHASE VILLAGE
NOTICE OF PUBLIC HEARING**

Please take notice that the Chevy Chase Village Board of Managers will hold a public hearing on the 10th day of February, 2014 at 7:30 p.m. The hearing will be held at the Chevy Chase Village Hall at 5906 Connecticut Avenue in Chevy Chase, Maryland.

**APPEAL NUMBER A-6488 (b)
MR. DAVID A. KIRSCH & MS. ANDREA N. KIRSCH
6400 BROOKVILLE ROAD
CHEVY CHASE, MARYLAND 20815**

The applicants seek a special permit from the Board of Managers pursuant to Section 8-11 of the Chevy Chase Village Building Code to install an external air conditioner in the front (Oxford Street) yard of the property.

The Chevy Chase Village Code § 8-23 (c) states:

No person shall install an external air conditioner, heat pump or generator within seven (7) feet of any side lot line or rear lot line nor in the front yard of any property without a special permit from the Board of Managers.

Additional information regarding this appeal may be obtained at the Chevy Chase Village Office between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday, may be viewed on the Village website at www.chevychasevillagemd.gov or you may contact the office for this information to be mailed to you.

This notice was emailed (where possible) and mailed to abutting and confronting property owners on the 30th day of January, 2014.

**Chevy Chase Village Office
5906 Connecticut Avenue
Chevy Chase, Maryland 20815
301-654-7300**



January 30, 2014

Mr. & Mrs. David Kirsch
6400 Brookville Road
Chevy Chase, MD 20815

Dear Mr. & Mrs. Kirsch:

Please note that your requests for a variance and special permits to install a generator and external air conditioner in the front yards at your property is scheduled before the Board of Managers on Monday, February 10, 2014 at 7:30 p.m.

Either you or another representative must be in attendance to present your case. At that time, additional documents may be introduced and testimony can be provided in support of the request.

Should the Board approve your requests, all applicable permits from the Village and Montgomery County must be obtained prior to commencing the work. For your convenience, enclosed please find copies of the Public Hearing Notices and mailing list. Please contact the Village office in advance if you are unable to attend.

Sincerely,

Ellen Sands
Permitting and Code Enforcement
Chevy Chase Village

Enclosures

CHEVY CHASE VILLAGE
5906 Connecticut Avenue
Chevy Chase, Maryland 20815
Phone (301) 654-7300
Fax (301) 907-9721
ccv@montgomerycountymd.gov
www.chevychasevillagemd.gov

BOARD OF MANAGERS

PATRICIA S. BAPTISTE
Chair

MICHAEL L. DINGER
Vice Chair

RICHARD M. RUDA
Secretary

DAVID L. WINSTEAD
Assistant Secretary

GARY CROCKETT
Treasurer

ROBERT C. GOODWIN, JR.
Assistant Treasurer

ELISSA A. LEONARD
Board Member


VILLAGE MANAGER
SHANA R. DAVIS-COOK

LEGAL COUNSEL
SUELLEN M. FERGUSON

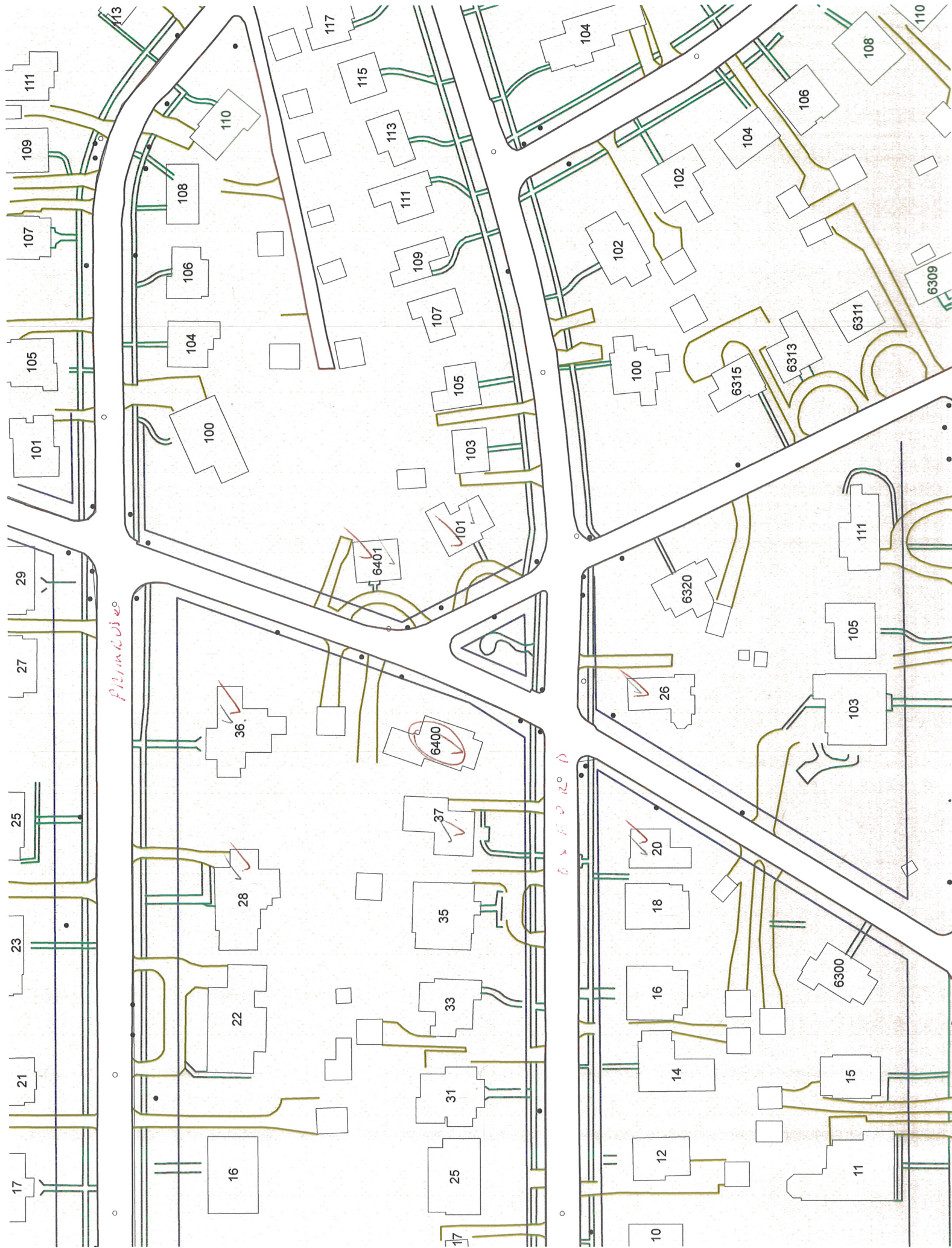
MAILING LIST FOR APPEAL A-6488

**MS. ANDREA N. KIRSCH &
MR. DAVID A. KIRSCH
6400 BROOKVILLE ROAD
CHEVY CHASE, MD 20815**

Adjoining and confronting property owners	
Ms. Natalie S. Jennings & Mr. Bruce C. Becker Or Current Resident 37 Oxford Street Chevy Chase, MD 20815	Mr. & Mrs. Marc E. Gordon Or Current Resident 20 Oxford Street Chevy Chase, MD 20815
Mr. & Mrs. Ashton Wiltshire Or Current Resident 26 Oxford Street Chevy Chase, MD 20815	Ms. Wendy Atrokhov Or Current Resident 101 Oxford Street Chevy Chase, MD 20815
Mr. & Mrs. Gerry Lawless Or Current Resident 6401 Brookville Road Chevy Chase, MD 20815	Mr. & Mrs. Chip Lindsay Or Current Resident 28 Primrose Street Chevy Chase, MD 20815
Mr. & Mrs. Bruce Baschuk Or Current Resident 36 Primrose Street Chevy Chase, MD 20185	


I hereby certify that a public notice was emailed (where possible) and mailed to the
aforementioned property owners on the 30th day of January, 2014.

**Ellen Sands
Permitting and Code Enforcement Coordinator
Chevy Chase Village
5906 Connecticut Avenue
Chevy Chase, MD 20815**



Chevy Chase Village

Building Permit Application for Air Conditioning Units, Heat Pumps, Generators and Geothermal Wells

These mechanical units are regulated by Chevy Chase Village Code Section 8-23(c).

Permit No: 6488

Property Address:

6400 Brookville Road, Chevy Chase, MD 20815

Resident Name: David and Andrea Kirsch

Daytime telephone: 301-652-4144

Cell phone: 202-262-0080

After-hours telephone:

E-mail: akirsch535@gmail.com

Primary Contact for Project:

☐ Resident

☒ Architect

☐ Project Manager

☐ Contractor*

*MHIC/MD Contractor's License No. (required):

Primary Contact Information:

Name: Lila Fendrick

Daytime telephone: 301-907-7700

After-hours telephone:

E-mail: team@fendrickdesign.com

Check all that apply:

☒ Air Conditioning Unit [3 # unit(s)]

☐ Heat Pump(s) [_____ # unit(s)]

Is this heat pump a geothermal/geoexchange or ground source heat pump? ☐ Yes ☐ No

If yes, how many wells will be drilled?

☒ Generator(s) [1 #unit(s)]

Check all appropriate boxes:

Mechanical unit is: ☒ new;

☐ an enlargement of an existing unit; and/or

☐ being relocated.

☐ Mechanical unit is a replacement in-kind and in the same location.

Description of type and location of mechanical unit(s) to be installed:

Two new air conditioning (AC) units and one new generator are proposed to be installed behind an existing brick freestanding wall and enclosed in a wood enclosure fence located on the front side of the house. In addition, a small new AC unit will be installed outside of the wood enclosure fence yet still screened by the existing brick wall. The two AC units will be set behind the front face of the house and will not encroach into the front yard. The generator and small AC unit will be set so they do not encroach greater than 5' into the front yard setbacks, per Montgomery County Code.

To be completed by Village staff:

Is this property within the historic district?

Yes ☒

No ☐

Staff Initials: ES

Date application filed with Village: 1/24/14

Date permit issued: _____

Expiration date: _____

Excerpt from the Chevy Chase Village Code:

Sec. 8-4. Residential building permits. [...] Any person intending to construct any of the following must, after obtaining a valid County building permit, obtain a building permit from the Village: [...] (6) Construction or installation of an external antenna, air conditioner or heat pump, including the replacement of any external air conditioner or heat unit, which is a developmental nonconformity (see sections 8-20 and 8-23);

Sec. 8-20. Developmental nonconformities.

(a) [...] An external air conditioner, heat pump or generator which is located so that it is a developmental nonconformity may not be replaced, unless the Board of Managers grants a variance.

Sec. 8-23. Tennis courts, antennae, air conditioners, heat pumps and generators.

(c) *Air conditioners, heat pumps and generators.* No person shall install an external air conditioner, heat pump or generator within seven (7) feet of any side lot line or rear lot line nor in the front yard of any property without a special permit from the Board of Managers. All external air conditioners, heat pumps and generators must comply with the noise control provisions and building regulations of the county.

Cross reference(s)--Fine for violation of this section, ' 6-3(a)(12).

Building Permit Application for Air Conditioning Units, Heat Pumps, Generators and Geothermal Wells: Filing Requirements

Application will not be reviewed until the application is complete

- ☐ Copy of stamped approved plans & permits from Montgomery County.
- ☐ This application form, signed by resident.
- ☐ Boundary Survey
- ☐ Site Plan (see: Village Site Plan Checklist to ensure completeness) showing exact location of units
- ☐ Tree Preservation Plan requested of Village arborist (see: Village Tree Inspection Request form). All required tree protections must be fully installed before any work begins.
- ☐ Filing Fee (due at time of application). Fee schedule is listed in Chapter 6 of the Village Code.
- ☐ Damage deposit or performance bond (due when permit is issued). Amount will be set by Village Manager.

Once this permit application is complete, the Village Manager will review the application and accompanying documents and, under most circumstances, act on the application within 5 to 10 working days.

If the Montgomery County permit is suspended, revoked or lapsed, the Village permit is automatically suspended, revoked or lapsed.

No signs advertising any service provider may be posted on the work site.

I hereby certify that I have the authority to make the foregoing application, that the application is correct, that I have read and understood all requirements and that the construction will conform to the regulations of the Montgomery County Zoning Code, the Village Code including Urban Forest code, and any covenants and easements on the subject property.

Applicant's Signature: Andrea N. Kirsch

Date: 1.23.14

For Use By Village Manager	Application approved with the following conditions:
For Use By Village Manager	Application denied for the following reasons:
	<p>DENIED</p> <p>JAN 24 2014</p> <p>Chevy Chase Village Manager</p> <p><i>Dana Delim The proposed generator is located in the front yard forward of the 25' BBL (Brookville Rd.) and the A/C unit is located in the front yard (Oxford St.)</i></p>

Filing Fees (due when application submitted)	Checks Payable to: Chevy Chase Village 5906 Connecticut Ave. Chevy Chase, MD 20815
Permit Application Fee: <input checked="" type="checkbox"/> \$50.00 (if mechanical unit is new, enlarged or relocated) <input type="checkbox"/> \$25.00 (if mechanical unit is a replacement in-kind and in the same location)	
Tree Preservation Plan Fee: <input type="checkbox"/> \$250.00 <i>assess w/ bldg permit</i> <input type="checkbox"/> Not required for this project	
TOTAL Fees: <i>\$50.00</i>	
Damage Deposit/Performance Bond <input type="checkbox"/> \$ _____ <input type="checkbox"/> Waived by Village Manager	Date: <i>1/24/14</i> Staff Signature: <i>[Signature]</i> Date: _____ Village Manager Signature: _____

For Village Staff use: Field file for inspections by Code Enforcement Officer has been created: <input type="checkbox"/> Yes (Date: _____)

Chevy Chase Village

Application for a Special Permit

Chevy Chase Village Code Section 8-1(aa) defines a Special Permit as permission granted by the Board of Managers in accordance with Article II Division B of this Chapter [8], to construct, install, remove or alter a structure or planting, or take other action where such permission is required by this Chapter.

Subject Property: 6400 Brookville Road	
Describe the Proposed Project: See Attached Page	
Applicant Name(s) (List all property owners): David and Andrea Kirsch	
Daytime telephone: 301-652-4144	Cell: 202-262-0080
E-mail: akirsch535@gmail.com	
Address (if different from property address):	
For Village staff use:	
Date this form received: 1/24/14	Special Permit No: A-6488 (6)

Filing Requirements:

Application will not be accepted or reviewed until the application is complete

- ☒ Completed *Chevy Chase Village Application for a Special Permit* (this form)
- ☒ Completed *Chevy Chase Village Building Permit Application*
- ☒ A boundary survey or plat diagram with a margin of error of one tenth of a foot or less showing all existing structures, projections and impervious surfaces.
- ☒ Surveys, plats, engineering reports, construction plans/specifications or other accurate drawings showing boundaries, dimensions, and area of the property, as well as the location and dimensions of all structures/fences/walls/etc., existing and proposed to be erected, and the distances of such structures/fences/walls/etc., from the nearest property lines. These drawings shall incorporate and display reference dimensions from the boundary survey or plat diagram required above.
- ☒ Copy of Covenants, except for special permits authorized by Sections 8-22, 8-26 or Article IV of Chapter 8 of the Chevy Chase Village Code.
- ☒ Applicable special permit fee listed in Chapter 6 of the Village Code.

Affidavit

I hereby certify that I have the authority to submit the foregoing application, that all owners of the property have signed below, that I have read and understand all requirements and that I or an authorized representative will appear at the scheduled public hearing in this matter. I hereby authorize the Village Manager, or the Manager's designee, and/or the Board of Managers to enter onto the subject property for the purposes of assessing the site in relation to this special permit request. I hereby declare and affirm, under penalty of perjury, that all matters and facts set forth in the foregoing application are true and correct to the best of my knowledge, information and belief.

Applicant's Signature: Andrea N. Kirsch

Date: 1.23.14

Applicant's Signature: David A. Kirsch

Date: 1/23/14

Describe the basis for the special permit request (attach additional pages as needed):

Describe the reasons why approval of the special permit would not adversely affect the public health, safety or welfare or the reasonable use of adjoining properties:

See Attached Page

Describe the reasons why the special permit can be granted without substantial impairment of the intent and purpose of Chapter 8 of the Chevy Chase Village Code, entitled *Buildings and Building Regulations*:

See Attached Page

In exercising its powers in connection with a special permit request, the Chevy Chase Village Board of Managers may reverse or affirm, wholly or partly, or may modify the requirement, decision or determination as it deems appropriate.

Special Permit Filing Fees	Checks Payable To: Chevy Chase Village 5906 Connecticut Ave. Chevy Chase, MD 20815
<i>Per Village Code Sec. 6-2(a)(24):</i> <input checked="" type="checkbox"/> \$300.00 for new construction. <input type="checkbox"/> \$150.00 for replacing existing non-conformities. <input type="checkbox"/> \$2,250.00 for demolition of main building. <input type="checkbox"/> \$300.00 for demolition of accessory building or structure. <input type="checkbox"/> \$300.00 for fences, walls, play equipment, trees, hedges, shrubbery in the public right-of-way. Fee Paid: <u>\$300.00</u>	Date Paid: <u>1/24/14</u> Staff Signature: <u>[Signature]</u>
	Approved to Issue Building Permit per Board Decision Signed by the Board Secretary on: Date: _____ Signature: _____ Village Manager

(References special permit aspects)

Describe the Proposed Project:

The project plans to locate a proposed generator and a small AC unit in front of the house at 6400 Brookville Road. Due to the corner location of the property, which has two front-yards and a shallow, tapering rear yard, the owner would like to request a special permit to allow the generator to extend into the front yard along Brookville Road by a maximum of 2'-7" and the small AC unit to extend into the front yard along Oxford Street by a maximum of 1'-11". The generator and small AC proposed locations will meet Montgomery County Code which states that both generators and air conditioners are allowed to encroach into the front or rear yard setbacks by up to 5 ft.

An existing privacy fence between the north end of the existing brick wall and the southeast corner of the house is proposed to be replaced with a new sturdy wood privacy fence of the same height. A second wood enclosure fence is proposed behind the wood privacy fence to provide an additional visual barrier and noise reduction barrier for the proposed generator. This inner enclosure fence will not be visible in any manner from Brookville Road, Oxford Street, or any adjacent properties due to the existing white-washed brick wall and the proposed outer wood privacy fence. The generator will be located in this area due to the location's low visibility and ability to reduce noise. This area of the site fronts Brookville Road and is the farthest area of the site from neighboring properties. The enclosure fence along with the brick wall will keep the generator hidden from all views and reduce noise pollution that may leave the site while the generator is running. In addition, the generator will not encroach farther forward than the existing front stoop, which is original to the house. For this reason, the generator's proposed location is not in conflict with the property covenant.

The proposed small AC unit will be located outside of the enclosure fence yet still hidden by the privacy fence and existing brick wall. By placing the small AC unit in this location, all of the mechanical equipment will be located together in the area of the property farthest away from neighboring properties. Like the generator, the small AC unit will be hidden from all views and will be located to maximize the reduction of noise which may leave the site.

Describe the reasons why approval of the special permit would not adversely affect the public health, safety or welfare or the reasonable use of the adjoining properties:

The area of the site in which the owners are proposing to locate the generator and AC unit fronts Brookville Road, a busy state route, and is the farthest area of the site from neighboring properties. The replacement privacy fence, the inner enclosure fence, and the existing 6'-0" tall brick wall will keep the generator and AC unit hidden from all views and reduce noise pollution to adjacent properties while the units are running. For these reasons, the owners believe this is the best location to eliminate all adverse impacts to neighboring and adjoining properties.

Describe the reasons why the special permit can be granted without the substantial impairment to the intent and purpose of Chapter 8 of the Chevy Chase Village Code, entitled Buildings and Building Regulations:

By locating the proposed generator and AC unit in the specified location, the owners will be consolidating the mechanical elements into a location farthest from neighboring properties. This will limit any adverse impacts to their neighbors while also opening the owners' back yard and the yard along Oxford Street to recreation, family dining, and socializing. With the lot having two front yards and a tapering rear yard, there are limited areas in which the generator and AC unit could be located. The other possible locations are all closer to neighboring properties and would adversely affect both the character of the house and the neighbors' use and enjoyment of their properties. For all of these reasons, the owners believe this is the best location for the generator and AC unit and request the approval of a special permit for this location.

Chevy Chase Village

Application for a ~~Special Permit~~ **VARIANCE**

Chevy Chase Village Code Section 8-1(aa) defines a Special Permit as permission granted by the Board of Managers in accordance with Article II Division B of this Chapter [8], to construct, install, remove or alter a structure or planting, or take other action where such permission is required by this Chapter.

Subject Property: 6400 Brookville Road	
Describe the Proposed Project: See Attached Page	
Applicant Name(s) (List all property owners): David and Andrea Kirsch	
Daytime telephone: 301-652-4144	Cell: 202-262-0080
E-mail: akirsch535@gmail.com	
Address (if different from property address):	
For Village staff use:	
Date this form received: 1/24/14	Variance Special Permit No: A-6488 (a)

Filing Requirements:

Application will not be accepted or reviewed until the application is complete

- ☒ Completed Chevy Chase Village Application for a Special Permit (this form)
- ☒ Completed Chevy Chase Village Building Permit Application
- ☒ A boundary survey or plat diagram with a margin of error of one tenth of a foot or less showing all existing structures, projections and impervious surfaces.
- ☒ Surveys, plats, engineering reports, construction plans/specifications or other accurate drawings showing boundaries, dimensions, and area of the property, as well as the location and dimensions of all structures/fences/walls/etc., existing and proposed to be erected, and the distances of such structures/fences/walls/etc., from the nearest property lines. These drawings shall incorporate and display reference dimensions from the boundary survey or plat diagram required above.
- ☒ Copy of Covenants, except for special permits authorized by Sections 8-22, 8-26 or Article IV of Chapter 8 of the Chevy Chase Village Code.
- ☒ Applicable special permit fee listed in Chapter 6 of the Village Code.

Affidavit

I hereby certify that I have the authority to submit the foregoing application, that all owners of the property have signed below, that I have read and understand all requirements and that I or an authorized representative will appear at the scheduled public hearing in this matter. I hereby authorize the Village Manager, or the Manager's designee, and/or the Board of Managers to enter onto the subject property for the purposes of assessing the site in relation to this special permit request. I hereby declare and affirm, under penalty of perjury, that all matters and facts set forth in the foregoing application are true and correct to the best of my knowledge, information and belief.

Applicant's Signature: Andrea N. Kirsch

Date: 1.23.14

Applicant's Signature: David A. Kirsch

Date: 1/23/14

Describe the basis for the variance request (attach additional pages as needed).

Describe the special conditions of the property (e.g., odd shape, small size, sloping topography, abuts state highway, etc.) and how the property compares to other properties in the Village:

Describe how enforcement of the building regulations would result in an unwarranted hardship and injustice because of the special condition(s) described above (i.e., describe (i) the unwarranted hardship and injustice that you claim exists and (ii) how the special conditions cause that unwarranted hardship and injustice):

Describe how the proposed variance most nearly accomplishes the intent and purpose of the requirements of Chapter 8 of the Chevy Chase Village Code, entitled *Buildings and Building Regulations*:

In exercising its powers in connection with a variance request, the Chevy Chase Village Board of Managers may reverse or affirm, wholly or partly, or may modify the requirement, decision or determination as it deems appropriate.

<p align="center">Variance Filing Fee</p> <p><i>Per Village Code Sec. 6-2(a)(24):</i></p> <p><input checked="" type="checkbox"/> \$300.00 for new construction.</p> <p><input type="checkbox"/> \$150.00 for replacing existing non-conformities.</p> <p><input type="checkbox"/> \$300.00 for fences, walls, play equipment, trees, hedges, shrubbery in the public right-of-way.</p> <p><input type="checkbox"/> Other: \$ _____</p> <p>Fee Paid: \$300.00</p>	<p>Checks Payable To: Chevy Chase Village 5906 Connecticut Ave. Chevy Chase, MD 20815</p> <p>Date Paid:</p> <p>Staff Signature:</p>
	<p>Approved to Issue Building Permit per Board Decision Signed by the Board Secretary on:</p> <p>Date: _____</p> <p>Signature: _____ Village Manager</p>

Describe the Proposed Project:

The project plans to locate a proposed generator in front of the house at 6400 Brookville Road. The owner would like to request a variance to allow the generator to encroach forward of the building restriction line along Brookville Road by a maximum of 2'-7". The generator's proposed location will meet Montgomery County Code which states that generators are allowed to encroach into the front or rear yard setbacks by up to 5 ft. In addition, the generator will not encroach farther forward than the existing front stoop, which is original to the house. For this reason, the generator's proposed location is not in conflict with the property covenant.

Describe the special conditions of the property (e.g. odd shape, small size, sloping topography, abuts state highway, etc.) and how the property compares to other properties in the Village.

The property at 6400 Brookville Road is a corner lot which has two front-yards, one along Brookville Road and one along Oxford Street. The lot is oddly shaped and tapers in dimension from the north to the south. In addition, the property has a very narrow backyard, measuring on average about 25'-0" from the house to the property line. The house fronts Brookville Road, a busy state road which connects Western Avenue to the south and East-West Highway to the north. The property is one of the only properties in the Village that fronts a state road.

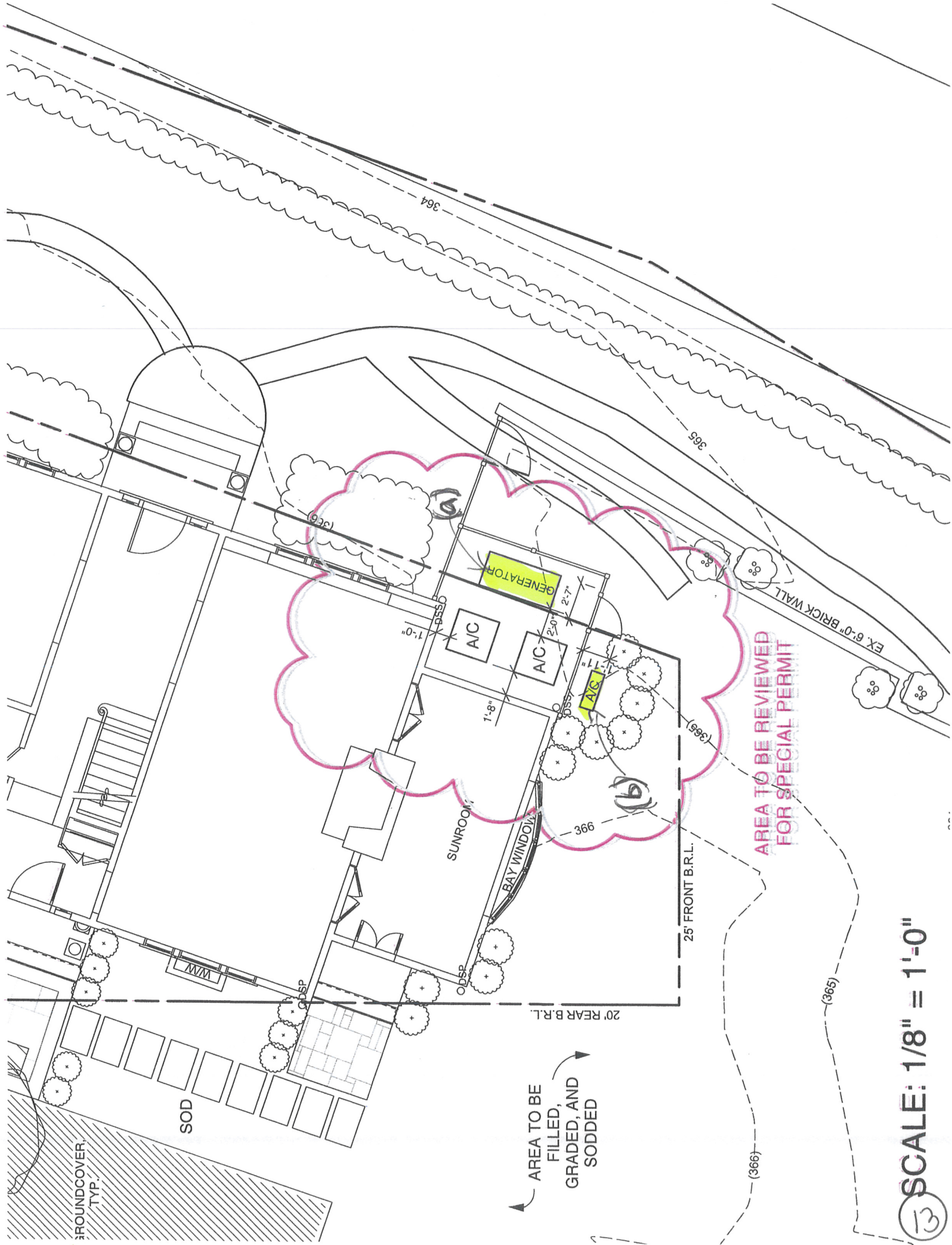
Describe how enforcement of the building regulations would result in an unwarranted hardship and injustice because of the special condition(s) described above (i.e., describe (i) the unwarranted hardship and injustice that you claim exists and (ii) how the special conditions cause that unwarranted hardship and injustice):

Enforcement of the building regulations would result in an unwarranted hardship due to the limited number of alternate locations for the generator, which would require the generator to be located in the rear yard. By locating the generator in the rear yard, the function and enjoyment of the rear yard would be adversely affected. The owner's house will have five doors and nine windows opening to their rear yard. The location of a generator in this area will create an undesirable space, which would otherwise be utilized for the owner's enjoyment. The rear yard is the only place on the property which offers privacy from Brookville Road for recreation, socializing and dining. In addition, a generator located in the rear yard would result in unwarranted hardship for the neighbors at 37 Oxford Street. Due to the narrow rear yard, the generator noise would adversely impact the use and enjoyment of their property.

To alleviate these unwarranted hardships, the owners are proposing to locate the generator in a location that fronts Brookville Road, a noisy and busy state route. This location is the farthest area of the site from neighboring properties, further relieving any adverse impacts of the generator. Lastly, a new privacy fence, new inner enclosure fence, and an existing 6'-0" tall brick wall will keep the generator hidden from all views and further reduce noise pollution to adjacent properties while the unit is running.

Describe how the proposed variance most nearly accomplishes the intent and purposes of the requirements of Chapter 8 of the Chevy Chase Village Code, entitled Buildings and Building Regulations:

By locating the proposed generator in the specified location, the owners will be consolidating the mechanical elements into a location farthest from neighboring properties. This will limit any adverse impacts to their neighbors while also opening the owners' back yard and the yard along Oxford Street to recreation, family dining, and socializing. With the lot having two front yards and a tapering rear yard, there are limited areas in which the generator could be located. The other possible locations are all closer to neighboring properties and would adversely affect both the character of the house and the neighbors' use and enjoyment of their properties. For all of these reasons, the owners believe this is the best location for the generator and request the approval of a variance for this location.



hundred forty seven, before the subscriber, a Notary Public of the State of Maryland, in and for Montgomery County, personally appeared John E. Oxley, the Agent Attorney for The First National Bank of Gaithersburg, the Mortgagee, and made oath in due form of law, that the consideration mentioned in the above mortgage is true and bona fide as therein set forth; and also that he is the agent of the said Mortgagee and authorized to make this affidavit.

Witness my hand and Notarial Seal.

Leonard H. Hoyle
Notary Public
Montgomery
County, Md.

Leonard H. Hoyle
Notary Public

Received Dec. 22, 1948

For value received the First National Bank of Gaithersburg, Maryland, Incorporated hereby releases the within mortgage this 17th day of December A. D. 1948. In testimony whereof the said First National Bank of Gaithersburg, Maryland, Incorporated has caused these presents to be signed by Leonard H. Hoyle its Executive Vice President and attested and its corporate seal hereto affixed by Leona G. Fulk, its Assistant Cashier.

Leona G. Fulk
Assistant Cashier

First Natl.
Bank of
Gaith. Seal

The First National Bank of
Gaithersburg, Maryland
Leonard H. Hoyle - Executive Vice
President.

EXAMINED

Mailed to - Grantee
6100 Brookville Rd.
Chevy Chase, Md.

6-10-48

At the request of Joseph E. Moody and Laura R. Moody the following Deed was recorded December 9th A. D. 1947 at 10:30 o'clock A. M., to wit:

This Deed Made this 28th day of November in the year one thousand nine hundred and forty-seven by and between Melvin B. Blake and wife, Julia I. Blake, parties of the first part, and Joseph E. Moody and Laura R. Moody his wife, parties of the second part.

Witnesseth, That in consideration of Ten and No/100 (\$10.00) dollars, the parties of the first part do grant unto the parties of the second part, in fee simple, as Tenants by the Entirety all that piece or parcel of land in the Montgomery County, Maryland, described as follows, to wit:

Lot numbered Fourteen (14) in Block numbered Fifty-seven (57) in the resubdivision of Section 2 of the Chevy Chase Land Company's Subdivision of lands at Chevy Chase, Montgomery County, Maryland, as per plat of said resubdivision recorded in Plat Book 2 at plat 106, one of the Land Records of said Montgomery County, Maryland.

Subject to covenants of record as follows:

1. That no building shall be erected on the land hereby conveyed unless and until the plans of the elevations, the design and color scheme thereof as well as the location of said building on said land shall be first approved in writing by the Chevy Chase Land Company or Montgomery County, Maryland, or its successors.
2. That all houses upon the premises hereby conveyed shall be built and used for residences purposes exclusively except stables, carriage houses, sheds or other outbuildings, for use in connection with such residences and that no trade, business, manufacture or sales, or nuisance of any kind shall be carried on or permitted upon said premises.
2. That no structure of any description shall be erected with 25 feet of front line of said premises and that no stable, carriage house, shed or outbuilding shall be erected except on the rear of said premises. In the case of corner lots any and all lines bordering upon a street, avenue, parkway shall be considered a front line.
3. That no house shall be erected on said premises at a cost less than \$7,500.00.
4. That any house erected on said premises shall be designed for the

occupancy of a single family and that no part of any house or of any structure appurtenant thereto shall be erected or maintained within 5 feet of the side line of premises hereby conveyed, nor within 10 feet nearest adjacent house.

5. That violation of any of aforesaid covenants and agreements may be enjoined and the same enforced at the suit of the Chevy Chase Land Co. of Montgomery County, Maryland, its successors and assigns (assigns including any person deriving title immediately or mediately from said Company to any lot or square or part of a lot or square in the section of the subdivision of which the land hereby conveyed forms a part).

Together with the improvements, rights, privileges, and appurtenances to the same belonging;

And the said parties of the first part covenant that they will warrant specially the property hereby conveyed; and that they will execute such further assurances of said land as may be requisite.

Witness their hands and seals the day and year hereinbefore written.

In presence of

Melvin B. Blake (Seal)

Thomas W. Hunt

Julia I. Blake (Seal)

as to both

(Internal Revenue \$34.65)

(State Tax \$34.65)

District of Columbia, to wit:

I, Thomas W. Hunt, a Notary Public in and for the District of Columbia, Do Hereby Certify that on this 28th day of November, 1947 Melvin B. Blake and Julia I. Blake parties to a certain Deed bearing date on the 28th day of November, 1947, and hereto annexed, personally appeared before me in said District, the said Melvin B. Blake and Julia I. Blake being personally well known to me as the persons who executed the said Deed, and acknowledged the same to be their act and deed.

Given under my hand and official seal this 28th day of November, 1947

Thomas W. Hunt

Thomas W. Hunt

Notary Public, DC

Notary Public

District of

Columbia

Mailed 40-

Continental Life Ins. Co.

Investment Bldg.

Wash. 5, D.C.

6-10-48

hundred and ... by and between Joseph E. Moody and wife, Laura R. Moody parties of the first part; and Robert E. Ankers and Joseph D. Eason, Trustees, parties of the second part:

Whereas, the said parties of the first part are justly indebted unto Continental Life Insurance Company, Incorporated in the full sum of Nineteen Thousand and No/100 (\$19,000.00) Dollars, for money loaned to be applied to the purchase price of the hereinafter described property, for which amount they have made and delivered their one certain joint and severally promissory note of even date herewith, payable to the order of the said Continental Life Insurance Company, Incorporated at office of Continental Life Insurance Company, Incorporated Washington, D. C., or at such other place as the holder of the note may from time to time designate in writing, with interest from date until paid at the rate of 4½ per centum per annum; said principal and interest being due and payable in monthly installments of One Hundred Forty-five and 35/100 (\$145.35) Dollars each, commencing on the 1st day of January, 1948, and continuing on the 1st day of each and every

50
 184462
 Filed
 1948
 Nov 30